

<input type="checkbox"/> FILED	<input checked="" type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
S. DEPUTY

FILED ☒ LODGED ☐
RECEIVED ☐ COPY ☐
AUG 29 2003
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
DEPUTY

UNITED STATES OF AMERICA
and the STATE OF ARIZONA,

Plaintiffs,

v.

CONSENT DECREE

ARIZONA PUBLIC SERVICE
COMPANY,

Defendant.

CIV 03 0767 PHX PGR

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint against the defendant Arizona Public Service Company ("Settling Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at and from the South Indian Bend Wash Superfund Site in Tempe, Arizona (the "Site"). The State of Arizona (the "State") joined in the Complaint against Settling Defendant on behalf of the Arizona Department of Environmental Quality ("ADEQ") alleging that Settling Defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Arizona law, for response costs incurred and to be incurred in connection with the Site. The United States and the State are

RECEIVED
SEP - 8 2003
U.S. DISTRICT COURT
DISTRICT OF ARIZONA

90-11-2-41713

referred to herein collectively as "Plaintiffs".

B. EPA listed the Site on the National Priorities List ("NPL") in September 1983. For administrative purposes, EPA has divided the Site into two Operable Units: a Soils/Vadose Zone Operable Unit ("Soils/Vadose Zone OU") and a Groundwater Operable Unit ("Groundwater OU"). The Soils/Vadose Zone OU includes the contaminated soils and subsurface vadose zones of various plants and facilities within the geographic area of the Site. The Groundwater OU includes three contaminated groundwater plumes denominated the western plume, the central plume, and the eastern plume.

C. EPA selected the remedial action for the Site in two separate Records of Decision. In September of 1993, EPA promulgated the Record of Decision for Volatile Organic Compounds in the Soils and Vadose Zone of the South Indian Bend Wash Superfund Site. In September of 1998, EPA promulgated the Record of Decision for Volatile Organic Compounds in the Groundwater OU of the South Indian Bend Wash Superfund Site (the "Groundwater OU ROD"). The remedy selected in the Groundwater OU ROD is natural attenuation in the central and eastern plumes and a pump and treat system in the western plume.

D. The United States has incurred and paid at least \$17,100,000 in costs responding to a release or a threatened release of hazardous substances in connection with the Site as of

the date of the lodging of this Consent Decree ("Past Site Response Costs") and has determined that \$5,700,000 of the Past Site Response Costs are costs related to response costs associated with the western plume of the Groundwater OU ROD ("Past Western Plume Response Costs") and that at least \$150,000.00 of the Past Site Response Costs are costs related to response costs associated with the facility owned and operated by the Settling Defendant ("Past Facility Response Costs"). EPA estimates that the future response costs associated with the portion of the Groundwater OU ROD attributable to the western plume are \$20,000,000 ("Future Western Plume Response Costs").

E. Plaintiffs allege that Settling Defendant owns and operates a power plant facility at 1500 University Drive in Tempe, Arizona (the "Facility") and that hazardous substances have been released at and from the Facility and have caused the United States to incur costs of responding to the release and threatened release of hazardous substances. Plaintiffs further allege that, on the basis of the foregoing, Settling Defendant is jointly and severally liable to Plaintiffs for recovery of costs of responding to a release or a threatened release of hazardous substances at or from the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

F. Settling Defendant may transfer ownership of, or operational responsibility for, the Facility to its affiliate

Pinnacle West Energy Corporation, for business purposes.

Pinnacle West Energy Corporation has not owned or operated the Facility.

G. Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

H. Notwithstanding the allegations of Plaintiffs and Settling Defendant's disclaimer in paragraph G above, Plaintiffs and Settling Defendant have agreed to settle and compromise Plaintiffs' claims for reimbursement of Site-related response costs by Settling Defendant's payment of 100% of the Past Facility Response Costs, 10% of the Past Western Plume Response Costs, and 10% of the estimated Future Western Plume Response Costs to Plaintiffs in the manner set out below, in the total amount of \$2,720,000.00, plus Interest if applicable.

I. Plaintiffs and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. § 1367. This Court also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Facility" shall mean the power plant facility at 1500 University Drive in Tempe, Arizona owned and operated by the

Settling Defendant.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Future Western Plume Response Costs" shall mean those costs to be incurred or paid by EPA and the State after the lodging of this Consent Decree in implementing the selected

groundwater remedy in the Groundwater OU ROD for the western plume, including operation and maintenance of the remedial system. The Parties agree, solely for the purposes of this Consent Decree, that Future Western Plume Response Costs shall be deemed to be \$20,000,000.00

i. "Groundwater OU ROD" shall mean the EPA "Record of Decision, VOCs in Groundwater Operable Unit, Indian Bend Wash Superfund Site, South Area, Tempe Arizona", signed on September 30, 1998, by the Regional Administrator, EPA Region IX, and all attachments thereto.

j. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). Interest on amounts due and owing to the State pursuant to the terms of this Consent Decree shall accrue at the rate established pursuant to A.R.S. § 44-1201.

k. "Past Facility Response Costs" shall mean those costs incurred and paid by EPA and DOJ through the date of lodging of this Consent Decree in conducting a subsurface investigation of the Facility in response to a release or threatened release from the Facility. The Parties agree, solely for purposes of this Consent Decree, that Past Facility Response Costs are \$150,000.00.

l. "Past Site Response Costs" shall mean those costs incurred and paid by EPA and DOJ through the date of the lodging of this Consent Decree in responding to a release or threatened release of hazardous substances at the Site.

m. "Past Western Plume Response Costs" shall mean those costs of response incurred and paid by EPA and DOJ in connection with the Site through lodging of this Consent Decree, 2001, which EPA has not identified to any specific plant or facility within the Site and which EPA has allocated to response actions associated with the western plume of the Groundwater OU ROD. The Parties agree, solely for purposes of this Consent Decree, that Past Western Plume Response Costs are \$5,700,000.00.

n. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

o. "Parties" shall mean the United States, the State of Arizona and Settling Defendant. The term "Parties" shall also include Pinnacle West Energy Corporation, an affiliate of Settling Defendant, if Settling Defendant transfers ownership of, or operational responsibility for, the Facility to Pinnacle West Energy Corporation.

p. "Plaintiffs" shall mean the United States and the State of Arizona.

q. "Section" shall mean a portion of this Consent

Decree identified by a roman numeral.

r. "Settled Response Costs" shall mean Past Site Response Costs, Past Western Plume Response Costs, Past Facility Response Costs, Future Western Plume Response Costs, and all other costs incurred by the United States or the State in connection with the Site whether incurred prior to or after the lodging of this Consent Decree.

s. "Settling Defendant" shall mean Arizona Public Service Company.

t. "Site" shall mean the South Indian Bend Wash Superfund site, located in Tempe, Arizona, as depicted on Exhibit A attached hereto.

u. "South Indian Bend Wash Special Account" shall mean a special account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

v. "State" shall mean the State of Arizona, including any departments, agencies or instrumentalities thereof.

w. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Response Costs to the United States. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the United States \$2,320,000.00, plus Interest if applicable, in reimbursement of Settled Response Costs. Interest on the payment shall begin to accrue on the fifteenth day after entry of the Consent Decree and shall accrue through the date of payment, if not previously made. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, the EPA Site Spill ID Number 09Y1, AZD980695969, DOJ Number 90-11-2-413/3, and the U.S.A.O. file number 9602074/2. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Arizona following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105.

Amounts paid to the United States under this Consent Decree

shall be deposited into the South Indian Bend Wash Special Account and shall be retained and used to conduct or finance response actions at or in connection with the Site or transferred by EPA to the EPA Hazardous Substance Superfund.

5. Payment of Response Costs to the State. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the State \$400,000.00, plus Interest if applicable, in reimbursement of Settled Response Costs. Interest on the payment shall begin to accrue on the fifteenth day after entry of the Consent Decree and shall accrue through the date of payment, if not previously made. Payment shall be made to the Water Quality Assurance Revolving Fund in the form of a certified check or cashier's check and shall reference *United States of America et al. v. Arizona Public Service Company*, U.S. District Court case number. Settling Defendant shall send the check to:

Mr. Michael D. Clark, Chief Financial Officer
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007
Attention: Accounts Receivable

A copy of the check and accompanying transmittal letter shall be sent to the ADEQ State Project Manager identified in Section XII, Paragraph 25 of this Consent Decree.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs)

or Section VI, Paragraph 7 (Stipulated Penalty), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalties.

a. If any amounts due to EPA or to the State under this Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA or to the State, as applicable, a stipulated penalty, in addition to the Interest required by Paragraph 6, of \$5,000.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or the State. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "South Indian Bend Wash Special Account" and shall be sent to:

Regional Financial Management Officer
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105.

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Site Spill ID Number 09Y1, AZD980695969, DOJ Number 90-11-2-413/3, and the U.S.A.O. file number 9602074/2. Copies of check[s] paid pursuant to this

Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions).

All payments to the State under this Paragraph shall indicate the payment is for stipulated penalties and shall be made to the Water Quality Assurance Revolving Fund and sent to the ADEQ Chief Financial Officer, with a copy of the check and accompanying transmittal letter sent to the ADEQ Project Manager in accordance with Section V, Paragraph 5 of this Consent Decree.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under Paragraphs 6-8 shall be in addition

to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

10. Notwithstanding any other provision of this Section, the United States or the State may, in its or their unreviewable discretion, waive payment of any portion of the Interest or stipulated penalties that have accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFFS

11. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 12 (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, with regard to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by Plaintiffs of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 6 (Interest on Late Payments) and 7 (Stipulated Penalties). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to

Settling Defendant and does not extend to any other person; provided, however, that if Settling Defendant transfers ownership of, or operational responsibility for, the Facility to its affiliate, Pinnacle West Energy Corporation, then this covenant not to sue shall also extend to Pinnacle West Energy Corporation.

12. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance outside of the Site;

c. liability for future disposal, release or threat of release of hazardous substances at or from the Facility;

d. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss;

e. liability for costs that are not Settled Response Costs; and

f. criminal liability.

13. Covenant Not to Sue by the State.

In consideration of the payment to be made by Settling Defendant pursuant to Section V, Paragraph 5 (Payment of Response Costs to the State) of this Consent Decree, and except as specifically provided in Paragraph 14 (Reservation of Rights by the State) of this Section, the State covenants not to sue and will not take any other civil or administrative action against Settling Defendant for any and all civil liability or injunctive relief or reimbursement with regard to the Site pursuant to any federal or state law, including A.R.S. §§ 49-287 and 49-288. This covenant not to sue shall take effect upon receipt by the State of all payments required by Section V, Paragraph 5 (Payment of Response Costs to the State) and Section VI, Paragraph 6 (Interest on Late Payments) and Paragraph 7 (Stipulated Penalties). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person; provided, however, that if Settling Defendant transfers ownership of, or operational responsibility for, the Facility to its affiliate, Pinnacle West Energy Corporation, then this covenant not to sue shall also extend to Pinnacle West Energy Corporation.

14. Reservations of Rights by the State.

The covenant not to sue set forth in Paragraph 13 does not

pertain to any matters other than those expressly specified therein. The State reserves, and this Consent Decree is without prejudice to, all rights the State may have against Settling Defendant with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site;
- c. liability for future disposal, release, or threat of release of hazardous substances at or from the Facility;
- d. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss;
- e. liability for costs that are not Settled Response Costs; and
- f. criminal liability.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

15. Pinnacle West Energy Corporation (if ownership of or operational responsibility for the Facility is transferred to it) and Settling Defendant covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to

the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, the Water Quality Assurance Revolving Fund, A.R.S. 49-281, et seq., or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d) or A.R.S. § 49-296.

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any

matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

18. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and A.R.S. § 49-292 for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States or the State asserts rights against Settling Defendant coming within the scope of such reservations. If Settling Defendant transfers ownership of, or operational responsibility for, the Facility to Pinnacle West Energy Corporation, Pinnacle West Energy Corporation shall be entitled to the same protection from contribution actions or claims as set forth in this paragraph with respect to Settling Defendant.

19. Settling Defendant agrees that, with respect to any

suit or claim for contribution brought by them for matters related to this Consent Decree, it will notify EPA and DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ and the State in writing within 10 days of service of the complaint or claim upon them. In addition, Settling Defendant shall notify EPA and DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree. If Settling Defendant transfers ownership of, or operational responsibility for, the Facility to Pinnacle West Energy Corporation, Pinnacle West Energy Corporation shall provide the same notices as set forth in this paragraph.

20. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Pinnacle West Energy Corporation (if Settling Defendant transfers ownership of, or operational responsibility for, the Facility to Pinnacle West Energy Corporation) and Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata,

collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VII.

X. ACCESS TO SITE AND FACILITY

21. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights with respect to the Site and the Facility, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

XI. RETENTION OF RECORDS

22. Until seven (7) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken in connection with the Site or at the Facility or to the liability of any person for response actions conducted and to be conducted in connection with the Site, regardless of any corporate retention policy to the contrary.

23. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA

and DOJ and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ or the State, and Settling Defendant shall deliver any such records or documents to EPA or the State. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States and the State have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the favor of

asserting the privilege.

24. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of their officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Facility, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to the potential liability of Settling Defendant regarding the Facility or the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be

sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State and Settling Defendant (including any successors or assigns), respectively.

As to the United States:

For DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DOJ Number 90-11-2-413/3)
P.O. Box 7611
Washington, D.C. 20044-7611

For EPA:

Melissa Pennington, SFD 8-1
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

James Collins, ORC-3
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

As to the State:

Bill DePaul
State Project Manager
Superfund Programs Section
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

As to Settling Defendant:

John R. Denman
Senior Vice President
Arizona Public Service Company
400 N. 5th Street, Mail Station 8376
Phoenix, Arizona 85004

C. David Martinez, Esq.
Senior Attorney
Pinnacle West Capital Corporation
400 N. 5th Street, Mail Station 8695
Phoenix, Arizona 85004

James J. Hamula, Esq.
Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, Arizona 85016

XIII. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION

27. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those

expressly contained in this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant and the State consent to the entry of this Consent Decree without further notice.

29. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. EFFECTIVE DATE

30. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVII. SIGNATORIES/SERVICE

31. Each undersigned representative of Settling Defendant, the United States and the State certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

32. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

33. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

34. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the State of Arizona and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

IT IS SO ORDERED THIS 28TH DAY OF August, 2003.


UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES

Date: 3.29.03

Tom Sansonetti

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

James R. MacAyeal

JAMES R. MACAYEAL
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20530-7611

PAUL K. CHARLTON
United States Attorney
MONTE C. CLAUSEN
Assistant United States Attorney
2 Renaissance Square
40 North Central Street, Suite 1200
Phoenix, Arizona 85004

Date: 3-14-03

Keith Takata


KEITH TAKATA
Director, Superfund Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

OF COUNSEL:

JAMES COLLINS
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

FOR THE STATE OF ARIZONA

Date: 2.6.03

A handwritten signature in dark ink, appearing to read 'Shannon M. Davis', is written over a horizontal line.

SHANNON M. DAVIS

Director

Waste Programs Division

Arizona Department of Environmental
Quality

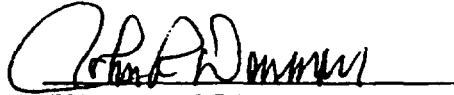
1110 West Washington Street

Phoenix, AZ 85007

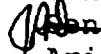
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Arizona Public Service Company, relating to the South Indian Bend Wash Superfund Site.

ARIZONA PUBLIC SERVICE COMPANY

Date: 11-21-02



JOHN R. DENMAN

 Senior Vice President

Arizona Public Service Company
400 N. 5th Street, Mail Station 8376
Phoenix, Arizona 85004

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation
c/o APS Custodian of Records
3225 N. Central Avenue
Phoenix, Arizona 85012

FIGURE 1
SITE LOCATION MAP
INDIAN BEND WASH. SOUTH
GROUNDWATER DU ROD

